

EXHIBIT 1

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 17-60042
In re: Anthony Thomas, et al v. Kenmark Ventures, LLC
Appeal From: BAP, Reno Bankruptcy Court
Fee Status: Paid

Docketed: 04/28/2017
Termed: 03/23/2018

Case Type Information:

- 1) bankruptcy appellate panel
- 2) other
- 3) null

Originating Court Information:

District: 0978-3 : 16-1058

Trial Judge: Meredith A. Jury, Bankruptcy Judge

Trial Judge: Frank L. Kurtz, Chief Bankruptcy Judge

Trial Judge: William J. Lafferty, III, Bankruptcy Judge

Date Filed: 03/04/2016

Date Order/Judgment:

03/28/2017

Date Order/Judgment EOD:

03/28/2017

Date NOA Filed:

04/25/2017

Date Rec'd COA:

04/26/2017

Prior Cases:

None

Current Cases:

None

In re: ANTHONY THOMAS
 Debtor,

WENDI THOMAS
 Debtor,

AT EMERALD, LLC
 Debtor,

ANTHONY THOMAS
 Appellant,

Laury Miles Macauley, Esquire, Attorney
 Direct: 775-321-3431
 [COR LD NTC Retained]
 Lewis and Roca, LLP
 Suite 410
 50 West Liberty Street
 Reno, NV 89501

Keith Marion Knowlton, Esquire, Attorney
 Direct: 480-755-1777
 [COR NTC Government]
 KEITH M. KNOWLTON LLC
 Suite 108
 Firm: 480-755-1777
 9920 S. Rural Rd.
 PMB # 117
 Tempe, AZ 85284-4100

WENDI THOMAS
 Appellant,

Laury Miles Macauley, Esquire, Attorney
 Direct: 775-321-3431
 [COR LD NTC Retained]
 (see above)

Keith Marion Knowlton, Esquire, Attorney
 Direct: 480-755-1777
 [COR NTC Government]
 (see above)

v.

KENMARK VENTURES, LLC
Appellee,

Wayne A. Silver, Attorney
Direct: 650-282-5970
[COR LD NTC Retained]
Law Office of Wayne A. Silver
643 Bair Island Road
Suite 403
Redwood City, CA 94063

Amy N. Tirre, Esquire, Attorney
Direct: 775-828-0909
[COR LD NTC Retained]
Law Offices of Amy N. Tirre, APC
Suite A
3715 Lakeside Drive
Reno, NV 89509

In re: ANTHONY THOMAS; WENDI THOMAS; AT EMERALD, LLC,

Debtors,



















ANTHONY THOMAS; WENDI THOMAS,














Appellants,

v.










KENMARK VENTURES, LLC,

Appellee.

- 04/28/2017  1
16 pg, 1.5 MB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. Setting schedule as follows: Mediation Questionnaire due on 05/05/2017. Appellants Anthony Thomas and Wendi Thomas opening brief due 08/03/2017. Appellee Kenmark Ventures, LLC answering brief due 09/05/2017 Appellant's optional reply brief is due 14 days after service of the answering brief. [10414793] (BG) [Entered: 04/28/2017 09:57 AM]
- 04/28/2017  2
2 pg, 69.86 KB Filed certificate of record R/T not required. BAP case. [10414804] (BG) [Entered: 04/28/2017 09:59 AM]
- 05/05/2017  3
2 pg, 722.04 KB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas Mediation Questionnaire. Date of service: 05/05/2017. [10423883] [17-60042] (Macauley, Laury) [Entered: 05/05/2017 01:18 PM]
- 05/22/2017  4
5 pg, 313.01 KB MEDIATION CONFERENCE SCHEDULED - Assessment Conference, 06/12/2017, 2:00 p.m. PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [10443209] (VS) [Entered: 05/22/2017 12:05 PM]
- 05/25/2017  5
1 pg, 188.71 KB MEDIATION CONFERENCE RESCHEDULED - Assessment Conference, 06/13/2017, 2:00 p.m. Pacific Time. (originally scheduled on 06/12/2017). [10447957] (VS) [Entered: 05/25/2017 08:14 AM]
- 06/14/2017  6
1 pg, 183.79 KB MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [10472256] (VS) [Entered: 06/14/2017 08:38 AM]
- 08/03/2017  7
46 pg, 602.28 KB Submitted (ECF) Opening Brief for review. Submitted by Appellants Anthony Thomas and Wendi Thomas. Date of service: 08/03/2017. [10532521] [17-60042] (Macauley, Laury) [Entered: 08/03/2017 03:04 PM]
- 08/03/2017  8
946 pg, 40.99 MB Submitted (ECF) excerpts of record. Submitted by Appellants Anthony Thomas and Wendi Thomas. Date of service: 08/03/2017. [10532983] [17-60042] --[COURT UPDATE: Attached corrected excerpts of record. 8/7/2017 by TYL] (Macauley, Laury) [Entered: 08/03/2017 06:01 PM]
- 08/07/2017  9
2 pg, 187.61 KB Filed clerk order: The opening brief [7] submitted by Anthony Thomas and Wendi Thomas is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [8] submitted by Anthony Thomas and Wendi Thomas. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10535557] (KT) [Entered: 08/07/2017 02:06 PM]
- 08/15/2017  10
Filed 4 paper copies of excerpts of record [8] in 5 volume(s) filed by Appellants Anthony Thomas and Wendi Thomas. [10545913] (KT) [Entered: 08/15/2017 03:38 PM]
- 08/15/2017  11
Received 7 paper copies of Opening Brief [7] filed by Anthony Thomas and Wendi Thomas. [10547513] (SD) [Entered: 08/16/2017 03:13 PM]
- 08/31/2017  12
49 pg, 250.03 KB Submitted (ECF) Answering Brief for review. Submitted by Appellee Kenmark Ventures, LLC. Date of service: 08/31/2017. [10565662] [17-60042] --[COURT UPDATE: Attached corrected brief. 9/6/2017 by TYL] (Silver, Wayne) [Entered: 08/31/2017 11:58 AM]
- 08/31/2017  13
415 pg, 17.06 MB Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Kenmark Ventures, LLC. Date of service: 08/31/2017. [10565683] [17-60042] (Silver, Wayne) [Entered: 08/31/2017 12:05 PM]
- 09/05/2017  14
COURT DELETED INCORRECT/DUPLICATE ENTRY. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [12]. Original Text: Submitted (ECF) Answering Brief for review. Submitted by Appellee Kenmark Ventures, LLC. Date of service: 09/05/2017. [10568661] [17-60042] (Silver, Wayne) [Entered: 09/05/2017 10:39 AM]
- 09/06/2017  15
2 pg, 187.56 KB Filed clerk order: The answering brief [12] submitted by Kenmark Ventures, LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [13] submitted by Kenmark Ventures, LLC. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10571111] (KWG) [Entered: 09/06/2017 02:24 PM]
- 09/12/2017  16
Filed 4 paper copies of supplemental excerpts of record [13] in 2 volume(s) filed by Appellee Kenmark Ventures, LLC. [10577970] (KT) [Entered: 09/12/2017 01:46 PM]
- 09/12/2017  17
Received 7 paper copies of Answering Brief [12] filed by Kenmark Ventures, LLC. [10578090] (SD) [Entered: 09/12/2017 02:27 PM]
- 09/14/2017  18
25 pg, 588.71 KB Submitted (ECF) Reply Brief for review. Submitted by Appellants Anthony Thomas and Wendi Thomas. Date of service: 09/14/2017. [10582090] [17-60042] (Macauley, Laury) [Entered: 09/14/2017 05:25 PM]

- 09/15/2017  19
2 pg, 187.15 KB Filed clerk order: The reply brief [18] submitted by Anthony Thomas and Wendi Thomas is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10582605] (KWG) [Entered: 09/15/2017 10:47 AM]
- 09/25/2017  20 Received 7 paper copies of Reply Brief [18] filed by Anthony Thomas and Wendi Thomas. [10592979] (SD) [Entered: 09/25/2017 02:31 PM]
- 10/11/2017  21 This case is being considered for an upcoming oral argument calendar in San Francisco
- Please review the San Francisco sitting dates for February 2018 and the two subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please inform the court *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** regarding availability for oral argument).
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** request for mediation).[10614305] (AW) [Entered: 10/11/2017 05:44 PM]
- 12/05/2017  22 Notice of Oral Argument on Tuesday, February 13, 2018 - 09:00 A.M. - Courtroom 2 - San Francisco CA.
- View the Oral Argument Calendar for your case [here](#).
- Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).
- When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#), complete the form, and file it via Appellate ECF or return the completed form to: SAN FRANCISCO Office. [10678849] (AKM) [Entered: 12/05/2017 01:17 PM]
- 12/09/2017  23
1 pg, 52.94 KB Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Wayne A. Silver for Appellee Kenmark Ventures, LLC. [10684989] [17-60042] (Silver, Wayne) [Entered: 12/09/2017 07:57 AM]
- 12/11/2017  24
1 pg, 650.71 KB Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Laury Miles Macauley, Esquire for Appellants Anthony Thomas and Wendi Thomas. [10686518] [17-60042] (Macauley, Laury) [Entered: 12/11/2017 03:49 PM]
- 02/08/2018  25
4 pg, 213.54 KB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas Motion to continue hearing of case. Date of service: 02/08/2018. [10756068] [17-60042] (Macauley, Laury) [Entered: 02/08/2018 09:44 AM]
- 02/09/2018  26
1 pg, 195.73 KB Filed clerk order (Deputy Clerk: AF): The Court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record and that oral argument would not significantly aid the decisional process. Therefore, this matter is ordered submitted without oral argument on February 13, 2018, at San Francisco, California. Fed. R. App. P. 34(a)(2). Appellants' motion to continue oral argument (Dkt. No. [25]) is denied as moot. [10757560] (AF) [Entered: 02/09/2018 09:52 AM]
- 02/12/2018  27
11 pg, 1.26 MB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas Motion to file supplemental excerpts of record. Date of service: 02/12/2018. [10761069] [17-60042] (Macauley, Laury) [Entered: 02/12/2018 04:54 PM]
- 02/12/2018  28
9 pg, 1.65 MB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas Correspondence: Errata to Appellants motion to supplement record. Date of service: 02/12/2018. [10761155] [17-60042]--[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 02/13/2018 by SLM] (Macauley, Laury) [Entered: 02/12/2018 07:06 PM]
- 02/13/2018  29 SUBMITTED ON THE BRIEFS TO CARLOS T. BEA, N. RANDY SMITH and JOSEPHINE L. STATON. [10762073] (Learned, Glen) [Entered: 02/13/2018 11:29 AM]
- 02/14/2018  30
19 pg, 543.54 KB Filed (ECF) Appellee Kenmark Ventures, LLC response opposing motion ([27] Motion (ECF Filing), [27] Motion (ECF Filing) motion to file supplemental excerpts of record). Date of service: 02/14/2018. [10763694] [17-60042] (Silver, Wayne) [Entered: 02/14/2018 10:38 AM]
- 03/23/2018  31
10 pg, 148.34 KB FILED MEMORANDUM DISPOSITION (CARLOS T. BEA, N. RANDY SMITH and JOSEPHINE L. STATON) We deny Thomas's Motion to Supplement the Record with evidence that purports to challenge the legitimacy of the state court judgment debt underlying this appeal. At the time of the bankruptcy trial,

Thomas was aware of all facts related to his personal liability for the judgment, but he failed to raise these arguments. Because "exceptional circumstances are lacking, we refuse to consider them now." *Scovis v. Henrichsen* (In re Scovis), 249 F.3d 975, 984 (9th Cir. 2011).; AFFIRMED. FILED AND ENTERED JUDGMENT. [10810020] (MM) [Entered: 03/23/2018 09:59 AM]

- 04/16/2018  32
1 pg, 184.31 KB MANDATE ISSUED.(CTB, NRS and JLS) [10838745] (RR) [Entered: 04/16/2018 04:15 PM]
- 06/22/2018  33
2 pg, 15.25 KB Received letter from the Supreme Court dated 06/18/2018: The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on June 18, 2018, extended the time to and including August 20, 2018. Supreme Court No. 17A1372. [10919324] (HH) [Entered: 06/22/2018 02:48 PM]
- 08/17/2018  34
2 pg, 9.71 KB Filed (ECF) notice of appearance of Keith Marion Knowlton for Appellants Anthony Thomas and Wendi Thomas. Date of service: 08/17/2018. [10980647] [17-60042] (Knowlton, Keith) [Entered: 08/17/2018 12:19 PM]
- 08/17/2018  35
Added attorney Keith Marion Knowlton for Wendi Thomas Anthony Thomas, in case 17-60042. [10980773] (NAC) [Entered: 08/17/2018 01:20 PM]
- 08/17/2018  36
2 pg, 9.71 KB Filed (ECF) notice of appearance of Keith Marion Knowlton for Appellants Anthony Thomas and Wendi Thomas. Date of service: 08/17/2018. [10980796] [17-60042] (Knowlton, Keith) [Entered: 08/17/2018 01:31 PM]
- 08/17/2018  37
32 pg, 1.18 MB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas Motion to recall the mandate. Date of service: 08/17/2018. [10980907] [17-60042] (Knowlton, Keith) [Entered: 08/17/2018 02:13 PM]
- 08/26/2018  38
10 pg, 105.18 KB Filed (ECF) Appellee Kenmark Ventures, LLC response to motion ([37] Motion (ECF Filing), [37] Motion (ECF Filing) motion to recall mandate). Date of service: 08/26/2018. [10989873] [17-60042] (Silver, Wayne) [Entered: 08/26/2018 09:16 PM]
- 09/02/2018  39
15 pg, 532.39 KB Filed (ECF) Appellants Anthony Thomas and Wendi Thomas reply to response (motion to recall mandate,). Date of service: 09/02/2018. [10998687] [17-60042] (Knowlton, Keith) [Entered: 09/02/2018 07:49 PM]
- 10/17/2018  40
3 pg, 51.99 KB Filed order (CARLOS T. BEA, N. RANDY SMITH and JOSEPHINE L. STATON) Thomas's Motion to Recall the Mandate is denied. Recall of the mandate is appropriate only when the Court is "animated by 'an overpowering sense of fairness and a firm belief that this is the exceptional case requiring recall of the mandate in order to prevent an injustice.'" *Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996) (citing *Verrilli v. City of Concord*, 557 F.2d 664, 665 (9th Cir. 1977)). Here, even if the Supreme Court's holding in *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752 (2018) were retroactively applied to exclude Thomas's omissions regarding the Thomas emerald from 11 U.S.C. section 523(a)(2)(A), we would still enter judgment in favor of Kenmark. First, the dischargeability of debt arising from a statement that is excluded from 11 U.S.C. section 523(a)(2)(A) is evaluated under 11 U.S.C. section 523(a)(2)(B). Section 523(a)(2)(B) differs from section 523(a)(2)(A) only insofar as the statement at issue must be made in writing and the creditor's reliance on the statement must be "reasonable." See *Candland v. Ins. Co. of N. Am.* (In re Candland), 90 F.3d 1466, 1471 (9th Cir. 1996), as amended (Oct. 2, 1996). The record supports a finding in favor of Kenmark as to both of these elements. Second, the bankruptcy court identified additional, alternative misrepresentations made by Thomas that independently support its judgment of nondischargeability, and Thomas has not shown that the bankruptcy court committed "clear error" as to these alternative grounds. *Anastas v. Am. Savings Bank* (In re Anastas), 94 F.3d 1280, 1283 (9th Cir. 1996) ("A finding of whether a requisite element of [a section] 523(a)(2)(A) claim is present is a factual determination reviewed for clear error.") Thus, there is no "real infirmity in [this Court's] previous decision, either when it was entered or when it is viewed in the light of later Supreme Court decisions." *Nevius*, 105 F.3d at 461. No further filings will be entertained in this closed case. [11050817] (WL) [Entered: 10/17/2018 03:44 PM]

☒ Documents and Docket Summary☐ Documents Only☒ Include Page Numbers

Selected Pages: 0

Selected Size: 0 KB

PACER Service Center			
Transaction Receipt			
U.S. Court of Appeals for the 9th Circuit - 12/18/2018 08:22:52			
PACER Login:	jh039600	Client Code:	Coppa Thomas
Description:	Docket Report (filtered)	Search Criteria:	17-60042
Billable Pages:	5	Cost:	0.50